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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,557	11/28/2005	Bodo W. Lambertz	DD-25017	7025
7590 Olson & Cepuritis, Ltd. 36th Floor 20 North Wacker Drive Chicago, IL 60606			EXAMINER HOEY, ALISSA L	
			ART UNIT 3765	PAPER NUMBER
			MAIL DATE 08/22/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/542,557

**Applicant(s)**

LAMBERTZ, BODO W.

**Examiner**

Alissa L. Hoey

**Art Unit**

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SG/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Priority*

1. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-20 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 4-20 of copending Application No. 10/544,127, both claim the same sock structure.

This is a provisional obviousness-type double patenting rejection.

4. Claims 1 and 12 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 and 12-15 of copending Application No. 10/563,895, both claim the same sock structure.

This is a provisional obviousness-type double patenting rejection.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Lambertz (US 6,286,151).

In regard to claim 1, Lambertz teaches a sock, in particular for use in athletic activities, characterized in that at least one climate channel (3: lower portions on both sides see figure 8) is provided in the tread area (figure 8).

In regard to claim 2, Lambertz teaches a sock according to Claim 1, characterized in that air channels (3: upper portions on both sides: figure 8) are provided on the inside of the leg and/or on the outside of the leg of the sock and are connected to at least one climate channel in the tread area (figure 8).

In regard to claim 3, Lambertz teaches a sock according to Claim 1, characterized in that the climate channels (3, lower portion: on both sides of the foot) have a curved shape in the tread area (figure 8).

In regard to claim 4, Lambertz teaches a sock according to claim 2, characterized in that the climate channels (3: lower portions) have a curved shape in the tread area

(figure 8).

In regard to claim 5, Lambertz teaches a sock according to Claim 1, characterized that the climate channels (3: lower portions) are partially tapered (figure 8, identifier 3: lower portion).

In regard to claim 6, Lambertz teaches a sock according to Claim 1, characterized in that the climate channels (3: lower portions) have an essentially circular cross section (figure 8).

In regard to claim 7, Lambertz teaches a sock according to Claim 1, characterized in that the climate channels (3: lower portions) are connected to one another through a central channel (band 14 extends below the foot and up to the support bands 12, 13) (figure 8).

In regard to claim 8, Lambertz teaches a sock according to Claim 2, characterized in that air channels (3: upper portions of each side of foot: figure 8) and the climate channels (3: lower portions) are made of the same material (figure 8).

In regard to claim 9, Lambertz teaches a sock according to Claims 2, characterized in that the air channel (3: upper portions of each side of foot: figure 8) is made of a climate-regulating mesh knit fabric (column 3, lines 32-45).

In regard to claim 10, Lambertz teaches a sock according to Claim 1, characterized in that the climate channel (3: lower portions) is made of climate-regulating mesh knit fabric (column 2, lines 25-33).

In regard to claim 11, Lambertz teaches a sock according to Claim 1, characterized in that the sock is equipped with an X-cross bandage (9).

In regard to claim 12, Lambertz teaches a sock according to of Claim 1, characterized in that the sock has padding (10, 11, 5, 6, 7 and 8).

In regard to claim 13, Lambertz teaches a sock according to Claim 2, characterized in that the climate channels (3: lower portion) are partially tapered (figure 8).

In regard to claim 14, Lambertz teaches a sock according to Claim 3, characterized in that the climate channels (3: lower portions) are partially tapered (figure 8).

In regard to claims 15-17, Lambertz teaches a sock according to Claim 2, characterized in that the climate channels (3: lower portion) have an essentially circular cross section (figure 8).

In regard to claims 18-20, Lambertz teaches a sock according to Claim 2, characterized in that the climate channels (3: lower portions) are connected to one another through a central channel (14: figure 8).

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and can be found cited in PTO-892 form submitted herewith.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ALH

/Alissa L. Hoey/  
Primary Examiner, Art Unit 3765